



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2011 Biennium

Bill #	HB0446	Title:	Revise opencut mining law
Primary Sponsor:	Pomnichowski, JP	Status:	As Introduced

- | | | |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
Expenditures:				
General Fund	\$168,951	\$197,931	\$202,879	\$212,362
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>(\$168,951)</u>	<u>(\$197,931)</u>	<u>(\$202,879)</u>	<u>(\$212,362)</u>

Description of fiscal impact:

This bill would require hydrologic data collection and report submittal to the Department of Environmental Quality (DEQ) for operations on which applications submitted after the effective date of the bill and may also apply to applications that are pending but not acceptable on the effective date. This would require DEQ to write hydrologic monitoring rules and review and assess data reports. DEQ would also be responsible for investigating complaints regarding alleged hydrologic impacts due to opencut mining operations and, if necessary, taking enforcement actions to resolve such complaints. Finally, DEQ would be subject to mandamus actions and making appropriate responses. Implementing this additional activity would require the equivalent of 2.50 FTE. The Judicial Branch is unable to determine the potential fiscal impact of increased judicial workload from this bill.

FISCAL ANALYSIS

Assumptions:

Department of Environmental Quality (DEQ)

1. This bill would require an opencut mining permit applicant to install at least two monitoring wells if the proposed operation might intercept groundwater; to submit at least two water samples to DEQ before a permit is issued if the operation might intercept surface water; after permit issuance, submit monthly

hydrologic monitoring reports in the above circumstances; and provide provisions for control of surface water runoff.

2. Intercepting surface water is interpreted to mean direct disturbance of channelized flow, i.e., ephemeral, intermittent, or perennial streams, but would not include surface overland flow. The requirement to submit surface water samples is interpreted to mean submitting water quality data collected by the applicant of channelized surface water proposed to be intercepted by the operation.
3. DEQ would need to develop appropriate rules and forms for groundwater monitoring well installation, hydrologic sample collection methods and sample analysis, and report submittal.
4. Permit applicants, to which the provisions in assumption 1 regarding sampling and hydrologic monitoring apply, would need to submit to DEQ monitoring plans for review and approval. In addition, DEQ would need to insure that all operations that are required to submit hydrologic monitoring data were doing so. Further, all submitted monitoring reports would need to be reviewed and assessed by DEQ for proper data collection and possible hydrologic impacts.
5. The above provisions would apply to pending, new permit, and amendment applications. It is estimated that 10% and 35% of such applications would intercept groundwater and surface channelized flow, respectively. It is assumed that 25 currently pending applications would be subject to some kind of monitoring and that DEQ would receive approximately 100 new applications per year, of which 35 would be subject to the bill requirements.
6. Another requirement is that these applications include “provisions for the control of surface water runoff”. This is already largely covered under current opencut mining rules, and where surface water discharge into state waters is proposed, under discharge permits required by state law as administered by DEQ’s Water Protection Bureau.
7. The bill also includes two new sections: “Suit for damage to water supply” and “Mandamus.” To the extent that these new sections would result in complaints requiring DEQ investigations and actions as outlined in the bill and mandamus actions brought against DEQ staff, they would create a variety of new responsibilities for DEQ.
8. All of the above would require 2.00 FTE environmental specialists (hydrologists) and a 0.50 FTE administrative assistant. Since the bill’s effective date would be October 1, 2009, the additional staff would be hired at that time. Personal services (salaries and benefits) costs would be: \$92,810 in FY 2010, \$123,747 in FY 2011, \$126,840 in FY 2012, and \$130,011 in FY 2013. Operating expenses would be \$76,141 in FY 2010, \$74,184 in FY 2011, \$76,039 in FY 2012, and \$82,351 in FY 2013, which includes supplies, travel, communications, education/training, contracts, and agency indirect costs.
9. There is a 2.5% inflation factor applied to FY 2011-2013. All funding would need to be provided by the general fund.

Judicial Branch

10. Section 2 of this bill allows an owner to file a suit against an operator for damage to a water supply.
11. Section 3 of this bill establishes an action of mandamus in District Court.
12. This legislation may increase District Court workload; however, the Judicial Branch is unable to estimate the impact on judicial workload or the fiscal impact. The cumulative impact of such legislation may over time require additional judicial resources because generally court dockets are full throughout the state.
13. The Judicial Branch is unable to determine the fiscal impact of this bill.

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
<u>Fiscal Impact:</u>				
FTE	1.88	2.50	2.50	2.50
<u>Expenditures:</u>				
Personal Services	\$92,810	\$123,747	\$126,840	\$130,011
Operating Expenses	\$76,141	\$74,184	\$76,039	\$82,351
TOTAL Expenditures	<u>\$168,951</u>	<u>\$197,931</u>	<u>\$202,879</u>	<u>\$212,362</u>
<u>Funding of Expenditures:</u>				
General Fund (01)	\$168,951	\$197,931	\$202,879	\$212,362
TOTAL Funding of Exp.	<u>\$168,951</u>	<u>\$197,931</u>	<u>\$202,879</u>	<u>\$212,362</u>
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
TOTAL Revenues	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$168,951)	(\$197,931)	(\$202,879)	(\$212,362)

Technical Notes:

1. Section 2 allows a person to submit a complaint to DEQ alleging damage to a water supply by an opencut operation. It requires DEQ to investigate the complaint; to require the operator to install monitoring wells or other practices that may be needed to determine the cause of water degradation, if such has occurred; and to issue within 90 days a written finding detailing the results of the investigation. If wells and perhaps other data collection devices needed to be installed to collect data in response to such complaints, collecting any meaningful data, and writing a report, within 90 days would not be possible at an opencut operation. Also, in such cases, there may be no baseline data available with which to compare data collected after mining has been underway; this may present difficulties in interpreting any data collected after the fact.
2. It is unclear whether the bill applies to applications pending on the effective date of the bill. An applicability section would remove this uncertainty.

*Sponsor's Initials*_____
*Date*_____
*Budget Director's Initials*_____
Date